Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	[redacted]
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175
	)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services	)	WC Docket No. 06-120

REPORT AND ORDER AND MEMORANDUM OPINION AND ORDER

Adopted: August 30, 2007 **Released: August 31, 2007**

By the Commission: Commissioners Copps and Adelstein concurring in part, dissenting in part, and issuing a joint statement; Commissioners Tate and McDowell issuing separate statements.

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I. INTRODUCTION

1. In this Order, we establish a new framework to govern the provision of in-region, long distance services by the Bell Operating Companies (BOCs) and their independent incumbent local exchange carrier (incumbent LEC) affiliates.[1] This framework replaces unnecessarily burdensome regulation with less intrusive measures that protect important customer interests while allowing the BOCs and their independent incumbent LEC affiliates to respond to marketplace demands efficiently and effectively. We find that this new framework will increase the BOCs' and the BOC affiliates' ability to develop and deploy innovative long distance services that meet their customers' needs.

[1] For ease of exposition, we use the term "in-region, long distance" to refer collectively to the telecommunications services that this Order addresses. This term encompasses: (1) the in-region, domestic, interLATA telecommunications services and the in-region, international telecommunications services that the BOCs were previously required to provide only through section 272 separate affiliates; (2) the in-region, domestic, interstate, interexchange telecommunications services and in-region, international telecommunications services that the BOCs' independent incumbent LEC affiliates are required to provide only through rule 64.1903 separate affiliates; and (3) the BOCs' in-region, interstate, intraLATA, interexchange telecommunications services. Each of these groups of services includes high-capacity services as well as traditional voice services.

2. Our new framework, which applies to AT&T, Qwest, and Verizon, is consistent with the Commission's decision in the *Qwest Section 272 Sunset Forbearance Order*.[2] As discussed in that Order, our current rules force a BOC to choose between two different regulatory regimes in providing in-region, long distance services, both of which impose significant burdens and costs: the BOC can provide these services on a nondominant carrier basis through a section 272 separate affiliate; alternatively, it can provide these services directly or through an affiliate that is not a section 272 separate affiliate subject to dominant carrier regulation, including rate regulation and tariff-filing requirements.[3] AT&T's and Verizon's independent incumbent LEC affiliates must provide in-region, domestic, interexchange telecommunications services and in-region, international telecommunications services only through rule 64.1903 separate affiliates. We conclude, for the reasons discussed below, that a new regulatory framework is more appropriate. Our new framework allows AT&T, Qwest, and Verizon to provide in-region, interstate, long distance services either directly or through affiliates that are neither section 272 separate affiliates nor rule 64.1903 separate affiliates, subject to nondominant carrier regulation, as long as they comply with certain targeted safeguards set forth below as well as with other continuing statutory and regulatory obligations.[4]

3. We also forbear from application of the Equal Access Scripting Requirement (EA Scripting Requirement) to the BOCs. We find this requirement, under which incumbent LECs must provide customers seeking new telephone exchange service with certain information regarding their long distance options, no longer justified as applied to AT&T, Qwest, and Verizon, given the marketplace changes that have occurred since the requirement's adoption and the requirement's relative costs and benefits. We also find good cause to waive the EA Scripting Requirement for the BOCs' independent incumbent LEC affiliates.

II. BACKGROUND

4. Until the Commission's recent *Qwest Section 272 Forbearance Order*,[5] all the BOCs were required to provide in-region, interLATA telecommunications services in accordance with the structural, transactional, and accounting requirements set forth in section 272 of the Communications Act of 1934,

[2] *See Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207 (2007) (*Qwest Section 272 Sunset Forbearance Order*).

[3] *See* 47 U.S.C. § 272; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5213, para. 9.

[4] We note that certain of our actions in this Order apply to interstate, international, and intrastate telecommunications services, while other actions we take today apply only to interstate and international telecommunications services. For example, our actions regarding structural requirements for BOC provision of in-region, interLATA telecommunications services apply to certain *interstate*, *international*, and *intrastate* telecommunications services. In contrast, our actions regarding dominant carrier regulation, however, apply only to certain *interstate* and *international* telecommunications services. The competitive safeguards we adopt below may apply only to interstate and international services, or to interstate, international, and intrastate services, depending on the safeguard. No action that we take in this order affects the requirements imposed by section 112 of the Consolidated Appropriations Act of 2005 or the regulation of the "interstate switched wholesale service elements" addressed in that Act. *See* Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809 (2004) (addressing, among other things, the regulation of AT&T Alascom's offering of certain services).

[5] *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5235-37, paras. 55-58 (conditionally granting Qwest's forbearance request so that Qwest could provide its in-region, interstate, interLATA telecommunications services without complying with all the requirements of section 272 and the Commission's implementing rules, and without being subject to section 203 and certain dominant carrier tariffing, price cap, rate of return, discontinuance, and transfer of control rules).

as amended (Communications Act or Act), and our implementing rules, or they would be subject to dominant carrier regulation. We summarize these regulatory requirements below.

A. Historical Regulation of InterLATA Telecommunications Services

5. In a series of orders in the *Competitive Carrier* proceeding, the Commission distinguished two kinds of carriers – those with individual market power (dominant carriers) and those without market power (nondominant carriers).[6] The Commission found it appropriate to continue to subject dominant carriers to full regulation under Title II of the Communications Act.[7] The Commission further found, however, that because nondominant carriers lack market power, "application of our current regulatory procedures to nondominant carriers imposes unnecessary and counterproductive regulatory constraints upon a marketplace that can satisfy consumer demand efficiently without government intervention,"[8] and therefore it was appropriate to streamline regulation of such carriers.[9] The Commission found AT&T to be dominant in the provision of interstate, long distance services both because of its large long distance market share and its control of bottleneck local facilities.[10]

6. During the years following this finding, however, the long distance marketplace became increasingly competitive and AT&T's long distance market share declined significantly. In October 1995, the Commission found AT&T to be nondominant in the provision of interstate long distance services.[11] The Commission found that "AT&T neither possesses nor can exercise individual market

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[6] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17308 (1982); Second Report and Order, 91 FCC 2d 59 (1982) (*Competitive Carrier Second Report and Order*); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28292 (1983); Third Report and Order, 48 Fed. Reg. 46791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), *vacated*, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, *MCI Telecommunications Corp. v. AT&T*, 509 U.S. 913 (1993); *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Competitive Carrier Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated*, *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (*Competitive Carrier Sixth Report and Order*), *aff'd*, *MCI v. AT&T*, 512 U.S. 218 (1994) (collectively, the *Competitive Carrier* proceeding); *see* 47 C.F.R. § 61.3(q), (y).

[7] *Competitive Carrier First Report and Order*, 85 FCC 2d at 10-11, para. 26.

[8] *Id.* at 20, para. 54.

[9] *Id.* at 11, para. 27. Specifically, nondominant carriers generally are not subject to direct rate regulation, are subject to reduced tariff obligations, and are accorded presumptive streamlined treatment under section 214 of the Act. *See id.* at 30-49, paras. 85-147; *see also* 47 C.F.R. §§ 1.773(a)(ii), 61.23(c), 63.03(b), 63.71(c).

[10] *See Competitive Carrier First Report and Order*, 85 FCC 2d at 22-23, para. 62. With respect to long distance market shares, the Commission found that AT&T had "significant market power" in the Message Telecommunications Service (MTS) and Wide Area Telecommunications Service (WATS) market and in the private line service market. *Id.* at 23, paras. 63-64. With respect to control of bottleneck facilities, the Commission found that "[c]ontrol of bottleneck facilities is present when a firm or group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants." *Id.* at 21-22, para. 59. AT&T was found to have such control by virtue of the fact that it controlled "access to 80% of the nation's telephones." *Id.* at 22-23, para. 62.

[11] *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995) (*AT&T Reclassification Order*).

power within the interstate, domestic, interexchange market as a whole."[12] AT&T also made voluntary commitments that were intended to allay concerns that had been raised concerning, for example, the effect of such reclassification on service to customers that make few interstate long distance calls, resellers, and geographically deaveraged rates.[13] Based on its findings and AT&T's commitments, the Commission granted AT&T's motion for reclassification as a nondominant carrier.[14]

7. In February 1996, the Telecommunications Act of 1996 became law.[15] The 1996 Act permitted the BOCs, which had been prohibited from providing interLATA telecommunications services under the Modification of Final Judgment (MFJ),[16] to provide upon enactment interLATA services[17] that originate outside of their regions.[18] The 1996 Act required the BOCs to apply to the Commission for approval to provide *in-region*, interLATA services, however; and it conditioned such approval on certain Commission determinations.[19] Specifically, under section 271 of the Act, the Commission was required to determine, *inter alia*, whether the BOC seeking permission to provide such services had complied with certain market-opening requirements contained in section 271 and whether the BOC would provide those services in accordance with the safeguards in section 272 of the Act.[20]

8. Section 272 imposes various structural, transactional, and nondiscrimination safeguards on the BOCs' provision of in-region, long distance services. Congress provided that the section 272 safeguards, other than those in section 272(e), would sunset three years after a BOC receives interLATA

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[12] *Id.* at 3294, para. 39.

[13] *Id.* at 3284, para. 17.

[14] *Id.* at 3356, para. 163.

[15] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act.

[16] *See United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 227 (D.D.C. 1982) (*United States v. AT&T*), *aff'd sub. nom. Maryland v. United States*, 460 U.S. 101 (1983); *see also SBC Communications Inc. v. FCC*, 138 F.3d 410, 412 (D.C. Cir. 1998) (stating that "[d]ivestiture was called for, in large part, because it was thought 'that a corporation that enjoyed a monopoly on local calls would ineluctably leverage that bottleneck control in the interexchange (long distance) market'") (quoting *United States v. Western Elec. Co.*, 969 F.2d 1231, 1238 (D.C. Cir. 1992)).

[17] Under the 1996 Act, a "local access and transport area" (LATA) is "a contiguous geographic area—
(A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission." 47 U.S.C. § 153(25).

[18] *See* 47 U.S.C. § 271(b)(2).

[19] 47 U.S.C. § 271.

[20] *Id.* The Commission adopted rules implementing section 272 in the *Non-Accounting* and *Accounting Safeguards Orders*. *See Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*); Order on Reconsideration, 14 FCC Rcd 11396 (1996); Second Order on Reconsideration, 15 FCC Rcd 1161 (2000); *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*); First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, 14 FCC Rcd 16299 (1999) (*Third Order on Reconsideration*).

authority in a state, absent Commission action extending that period.[21] These section 272 safeguards that sunset include requirements that: (1) the BOCs provide in-region, interLATA services only through separate affiliates;[22] (2) the separate affiliates operate independently from their BOC affiliates;[23] (3) the separate affiliates maintain books, records, and accounts separate from those their BOC affiliates maintain;[24] (4) the separate affiliates conduct any transactions with their BOC affiliates on an arm's length basis;[25] (5) the BOCs do not discriminate between their section 272 separate affiliates and other entities in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards;[26] and (6) the BOCs, after receiving section 271 approval, obtain and pay for biennial joint federal/state audits to determine whether they have complied with section 272.[27] In addition, section 272(e) sets forth certain safeguards that do not sunset after three years, including requirements that: (1) each BOC or BOC affiliate that is classified as an incumbent LEC must "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;"[28] and (2) each BOC must charge its section 272 separate affiliate, or "impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service."[29]

9. Non-BOC incumbent LECs (also known as independent incumbent LECs) also are subject to structural separation requirements if they wish to provide in-region, interstate, interexchange telecommunications services other than through resale. Specifically, independent incumbent LECs are required to provide these services only through separate affiliates that satisfy the separation requirements in section 64.1903 of our rules.[30] The separate affiliate must: (1) maintain books of account separate

[21] *See* 47 U.S.C. § 272(f)(1). We note that the section 272 safeguards, other than those in section 272(e), sunset with respect to interLATA information services four years after enactment of the 1996 Act. *See* 47 U.S.C. § 272(f)(2).

[22] 47 U.S.C. § 272(a)(1).

[23] 47 U.S.C. § 272(b)(1).

[24] 47 U.S.C. § 272(b)(2).

[25] *See* 47 U.S.C. §§ 272(b)(1), (b)(2), (b)(5).

[26] *See* 47 U.S.C. § 272(c)(1).

[27] 47 U.S.C. § 272(d).

[28] 47 U.S.C. § 272(e)(1); *see also* 47 U.S.C. §§ 251(c), (h).

[29] 47 U.S.C. § 272(e)(3).

[30] *See* 47 C.F.R. § 64.1903; *see also Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15763, para. 7 (1997) (*LEC Classification Order*), *recon. denied*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999) (*Second Reconsideration Order*). In the *Second Reconsideration Order*, the Commission relaxed these requirements for those independent incumbent LECs that provide in-region, interstate and international, interexchange telecommunications services exclusively through resale, by allowing them to do so through a separate corporate division subject to certain safeguards. *Second Reconsideration Order*, 14 FCC Rcd at 10777, para. 9; 47 C.F.R. § 64.1903(b)(1). Independent incumbent LEC resellers still must maintain separate books of account, comply with the affiliate transaction rules, and acquire any services from the exchange company pursuant to tariff or generally available contract rates. *See generally Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197-205, paras. 8-18 (setting forth original separate subsidiary requirements for independent incumbent LECs, which were subsequently modified in the *LEC Classification* proceeding).

from those the independent incumbent LEC maintains; (2) purchase services from the independent incumbent LEC pursuant to the incumbent LEC's tariffs or generally available contract rates; and (3) not jointly own transmission or switching facilities with its independent incumbent LEC.[31] Both AT&T and Verizon have independent incumbent LEC affiliates, though these affiliates voluntarily comply with the more stringent safeguards set forth in section 272 and the Commission's rules governing BOC provision of in-region, interLATA services.[32]

10. In the *LEC Classification Order*, the Commission addressed the issue of whether, once a BOC received in-region, interLATA authority, its provision of in-region, interstate, long distance services should be subject to dominant carrier obligations.[33] In that Order, the Commission focused its analysis on: (1) whether a section 272 separate affiliate could unilaterally raise prices of in-region, interstate, long distance services by restricting its own output; and (2) whether the BOC could indirectly raise prices of those services by increasing the price of essential inputs that its rivals need to offer their services.[34] The Commission found that the section 272 separate affiliates were unlikely to be able unilaterally to raise the prices of in-region, interstate, long distance services,[35] and that, although the BOCs possessed exclusionary market power over bottleneck access facilities, various safeguards prevented them from raising the prices of those services indirectly by raising rivals' costs.[36]

11. The Commission further found that dominant carrier regulations were "generally designed to prevent a carrier from raising prices by restricting its own output rather than to prevent a carrier from raising its prices by raising its rivals' costs."[37] Moreover, it found that dominant carrier regulation could

[31] *See* 47 C.F.R. § 64.1903 (providing the Commission's separate affiliate rules for independent incumbent LECs); *LEC Classification Order*, 12 FCC Rcd at 15849-15856, paras. 162-173; *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197-98, para. 8.

[32] *See* Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 1 (filed Apr. 24, 2007) (AT&T Apr. 24, 2007 *Ex Parte* Letter) (stating that Southern New England Telephone Company (SNET) provides interstate long distance services through a section 272 separate affiliate); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 2 (filed May 8, 2007) (Verizon May 8, 2007 *Ex Parte* Letter) (indicating that the former GTE long distance companies that are designated as section 272 separate affiliates and the former GTE LECs comply with all provisions of section 272, other than section 272(c), in their interactions with each other and with the former Bell Atlantic companies). We note that AT&T has two independent incumbent LEC affiliates, SNET and Woodbury Telephone Company (Woodbury). SNET is a price cap LEC for interstate ratemaking purposes, while Woodbury's interstate rates are set on a rate of return basis. AT&T, however, is in the process of integrating Woodbury into SNET. Once the integration process is complete, the combined entity will be a price cap LEC for interstate ratemaking purposes. Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 1 (filed Apr. 27, 2007) (AT&T Apr. 27, 2007 *Ex Parte* Letter); *see* AT&T Apr. 24, 2007 *Ex Parte* Letter at 1.

[33] *See LEC Classification Order*, 12 FCC Rcd at 15762-63, para. 6, & 15802, para. 82.

[34] *See LEC Classification Order*, 12 FCC Rcd at 15802-03, para. 83. In that Order, the Commission distinguished between "classical" (or "Stiglerian") market power, which "is the ability of a firm profitably to raise and sustain its price above the competitive level by restricting its own output," and "exclusionary" (or "Bainian") market power, which is the "ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output." *Id.* (citing Thomas G. Krattenmaker, Robert H. Lande & Steven C. Salop, *Monopoly Power and Market Power in Antitrust Law*, 76 GEO. L. J. 241, 249-53 (1987)).

[35] *LEC Classification Order*, 12 FCC Rcd at 15810-12, paras. 96-97.

[36] *Id.* at 15812-33, paras. 98-130.

[37] *Id.* at 15804, para. 85.

"dampen competition" and would impose significant costs and burdens on the BOC section 272 separate affiliates.[38] Based on these findings, the Commission concluded that, so long as the BOCs provided in-region, interstate, long distance services through section 272 separate affiliates, these affiliates should be treated as nondominant in the provision of such services.[39] The Commission stated that it could not predict how competition would develop once the BOCs received in-region interLATA authority or what safeguards, if any, would be needed after the section 272 safeguards sunset.[40] Subsequently, the Commission made clear that, following sunset of the section 272 safeguards, to the extent a BOC chooses to provide in-region, interstate, interLATA telecommunications services either directly or through an affiliate that is not a section 272 separate affiliate, it would be subject to dominant carrier regulation.[41]

12. The Commission granted its final interLATA authority to a BOC for an in-region state on December 3, 2003,[42] and the Commission has not extended the period for which section 272 safeguards (other than those in section 272(e)) apply. Thus the section 272 requirements, other than those in section 272(e), have sunset throughout all BOC regions. Accordingly, section 272 does not preclude the BOCs from providing in-region, interLATA, long distance services either directly or through an affiliate that is not a section 272 separate affiliate in all their in-region states.[43] Despite the sunset of section 272's requirements, however, the BOCs continue to provide virtually all of their in-region, interstate, interLATA, long distance services through their section 272 separate affiliates. These affiliates provide in-region, interstate, long distance services pursuant to the Commission's rules for nondominant carriers.[44] These rules generally preclude carriers classified as nondominant in the provision of interstate and international long distance services from filing tariffs for those services.[45] Instead, carriers subject to these rules provide those services pursuant to generally available offerings posted on their websites and under contract to large enterprise customers.[46]

13. Under the *LEC Classification Order*, the BOCs would be subject to dominant carrier regulation if they provided in-region, interLATA, long distance services in a manner that did not comply with section 272 and the Commission's implementing rules, absent Commission action relieving them of

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[38] *Id.* at 15806-08, paras. 88-90.

[39] *See id.* at 15834-35, paras. 133-34. The Commission recognized, however, that the structural separation requirements in section 272 would sunset with respect to in-region, interLATA telecommunications services three years after the BOCs were authorized to provide in-region, interLATA services unless the Commission extends such period by rule or order. *Id.* at 15835, n.391; *see* 47 U.S.C. § 272(f)(1). We note that section 272(f)(3) preserves the Commission's authority to prescribe safeguards under other sections of the Act. *See* 47 U.S.C. § 272(f)(3).

[40] *LEC Classification Order*, 12 FCC Rcd at 15835, para. 134 n.391.

[41] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, 17 FCC Rcd 26869, 26870, paras. 1-2, nn.5, 8 (2002) (*Sunset Order*) (citing *LEC Classification Order*, 12 FCC Rcd at 1576, para. 4 n.12); *see also Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198-99, para. 9 n.23 (determining that the Commission would classify the BOCs as dominant in the provision of interstate, interLATA telecommunications services until it determined what safeguards, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant treatment).

[42] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5212, para. 7 (citing *Application by Qwest Communications International Inc. for Authorization To Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194, Memorandum Opinion and Order, 21 FCC Rcd 7169 (2003)).

[43] *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5212, para. 54.

[44] *See* 47 C.F.R. §§ 61.19-61.25.

[45] 47 C.F.R. § 61.19.

[46] *See* 47 C.F.R. § 61.55.

the obligation to comply with dominant carrier rules.[47] These rules, among other things, would require the BOCs to file tariffs setting forth the prices, terms, and conditions under which they offer such services.[48] According to our tariffing rules, these tariff filings would have to contain detailed information including twelve-month cost projections, and working papers and statistical support for any new services offered.[49] The tariffs, cost projections, and supporting documentation would have to be filed at least seven or fifteen days before the BOCs would be permitted to initiate new services or revise existing services.[50] The BOCs would also have to perform and file calculations as specified in our rules to change their maximum rates.[51]

B. Section 272 Sunset Rulemaking

14. In May 2002, the Commission initiated a rulemaking proceeding (the *Section 272 Sunset* proceeding) to determine what regulatory framework should apply to BOC provision of in-region, interLATA telecommunications services after the section 272 safeguards (other than those in section 272(e)) had sunset pursuant to section 272(f)(1).[52] The Commission invited comment on whether it should extend those safeguards beyond the three-year period Congress established for each state.[53] The Commission also invited comment on what, if any, alternative safeguards it might apply to the BOCs' provision of in-region, interLATA, telecommunications services.[54]

15. In May 2003, the Commission issued a *Further Notice* seeking comment on whether the BOCs should be classified as dominant if they provided in-region, interstate and international, long distance services in a way that did not comply with the section 272 separate affiliate requirements.[55] This *Further Notice* also invited further comment on the issues raised in the *Independent Incumbent LEC* proceeding, concerning whether independent incumbent LECs should be classified as dominant in their provision of in-region, interstate and international, interexchange telecommunications services if the Commission eliminated or modified the separate affiliate requirements in section 64.1903 of the Commission's rules.[56]

[47] *See LEC Classification Order*, 12 FCC Rcd at 15834-36, paras. 133-34; *see also Sunset Order*, 17 FCC Rcd at 26869-71, paras. 1-2, nn.5, 8.

[48] 47 C.F.R. § 61.58.

[49] 47 C.F.R. § 61.38(i)-(ii).

[50] *See* 47 C.F.R. § 61.58.

[51] *See* 47 C.F.R. §§ 61.41-61.49. As discussed in part III.A.2.c, other dominant carrier requirements include certain price cap, rate of return, discontinuance, transfer of control, contract filings, and reporting requirements.

[52] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002) (*Section 272 Sunset Notice*).

[53] *Id.* at 9917, para. 1, & 9920, para. 10.

[54] *Id.* at 9917, para. 1.

[55] *Section 272(f) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*Section 272 Sunset and Independent LEC Further NPRM*).

[56] *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, 18 FCC Rcd at 10914-15, para. 2; *see also 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001) (*Independent Incumbent LEC NPRM*). For purposes of citing to the record, we use the format "NPRM Comments or NPRM Reply" when referring to comments or reply comments filed in response to the *Section 272 Sunset Notice*, and "FNPRM (continued....)

C. Equal Access Scripting Requirement

16. In June 2006, AT&T filed a petition asking the Commission to forbear from, among other things, "obligations that require BOCs to inform new customers that they have a choice of long distance providers and to read them a list of providers."[57] This EA Scripting Requirement requires incumbent LECs to inform customers who call to obtain new local exchange service that they may obtain long distance service from other carriers, and to read the customers a list of carriers offering long distance service in their area upon request.[58] This requirement originated during the implementation of equal access following divestiture and is preserved by section 251(g) of the Act.[59]

D. Qwest Forbearance Proceeding

17. In November 2005, Qwest filed a petition asking the Commission to forbear from applying its dominant carrier rules to Qwest if Qwest were to provide in-region, interstate, interLATA, telecommunications services in a manner that did not meet the requirements of section 272 and the Commission's implementing rules.[60] The Commission granted in part and denied in part Qwest's

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Comments or FNPRM Reply" when referring to comments or reply comments filed in response to the *Section 272 Sunset and Independent Incumbent LEC Further NPRM.*

[57] Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, at 1, 37-38 (filed June 2, 2006) (AT&T Petition). On June 23, 2006, the Wireline Competition Bureau (Bureau) issued a public notice inviting comment on the AT&T Petition. *See Pleading Cycle Established for Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard To Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Public Notice, 21 FCC Rcd 6862 (WCB 2006). On May 30, 2007, the Bureau, pursuant to section 10(c) of the Act, extended by 90 days (until August 31, 2007) the date by which the petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standards for forbearance under section 10(a) of the Act. *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Order, 22 FCC Rcd 9960 (WCB 2007). AT&T also requested that the Commission forbear from applying certain dominant carrier regulations to in-region, interstate, interexchange services, including international services, provided by any AT&T affiliates, and from applying the Commission's separate affiliate requirements for independent incumbent local exchange carriers (independent incumbent LECs) to AT&T's provision of interexchange services in AT&T's independent incumbent LEC service areas. AT&T Petition at 31-36.

[58] *See Investigation of Access and Divestiture Related Tariffs, Allocation Plan Waivers and Tariffs*, CC Docket No. 83-1145 Phase I, Memorandum Opinion and Order, 101 FCC 2d 935, 949-50, para. 40 (CCB 1985), *recon. denied*, 102 FCC 2d 503 (1985) (*Equal Access Allocation Tariff Order*); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22046, para. 292; *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 667-72, paras. 231-39 (1997) (*BellSouth South Carolina Order*) (stating that BOCs are permitted to market their own long distance services as long as their marketing scripts fulfill the equal access requirements), *aff'd, BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998).

[59] *See* 47 U.S.C. § 251(g). In general terms, section 251(g) requires continued compliance with equal access and nondiscrimination requirements established prior to the enactment of the Telecommunications Act of 1996 by court order, consent decree, or the Commission until those requirements are explicitly superseded by subsequent Commission action.

[60] Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant to 47 U.S.C. §160, at 1 (filed Nov. 22, 2005), as amended by Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant To 47 U.S.C. § 160 (filed Nov. 30, 2005) (Qwest Petition).

forbearance request, subject to certain conditions.[61] The Commission found that Qwest lacked classical market power in the provision of in-region, interstate, interLATA, telecommunications services,[62] but further found that Qwest might continue to have exclusionary market power in relation to these services by reason of its control of bottleneck facilities. It determined, however, that, despite Qwest's possibly possessing exclusionary market power, the burden of compliance with dominant carrier regulation outweighed the benefits.[63] The Commission further found that existing safeguards, along with certain special access performance metrics and imputation conditions that it adopted, were adequate to prevent Qwest from exercising this exclusionary market power.[64] Accordingly, the Commission found that Qwest could provide its in-region, interstate, interLATA telecommunications services without complying with all the requirements of section 272 and the Commission's implementing rules in its provision of these services, and that it would not be subject to section 203 and certain dominant carrier tariffing, price cap, rate of return, discontinuance, and transfer of control rules, provided that it complied with its ongoing statutory obligations and the conditions adopted in the Order.[65]

III. DISCUSSION

18. As discussed below, we establish a new regulatory framework for the BOCs' and their independent incumbent LEC affiliates' provision of in-region, long distance services. As in prior orders, we begin by analyzing whether these carriers could exercise either classical or exclusionary market power. We then consider the relative costs and benefits of both dominant carrier regulation and the section 272 structural safeguards. As explained below, we find that dominant carrier regulation is not warranted, and that the current structural safeguards should be replaced with other, less costly regulations that still protect consumers and competition. We also find that forbearance from the application of the EA Scripting Requirement to the BOCs is warranted here. We also find good cause to waive the EA Scripting Requirement for the BOCs' independent incumbent LEC affiliates.

A. Report and Order in WC Docket No. 02-112 and CC Docket No. 00-175

1. Market Analysis

19. In this part, we address whether the BOCs could exercise either classical or exclusionary market power with respect to in-region, long distance services provided either directly or through an affiliate that is not a section 272 separate affiliate. Our analysis builds upon the Commission's analyses in prior proceedings. Specifically, in the *Competitive Carrier* proceeding, the Commission determined that dominant carrier regulation was not necessary to ensure just, reasonable, and nondiscriminatory rates and practices where a carrier lacked individual market power.[66] In the *LEC Classification Order*, the Commission elaborated on the conditions under which a carrier could exercise market power.[67]

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[61] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5235-37, paras. 55-58.

[62] *See id.* at 5233, para. 51. Qwest committed to providing certain calling plans and billing information to address the Commission's concern that Qwest's residential customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service may not be able to avoid the impact of a price increase by engaging in usage substitution. *Id.* at 5233, para. 52, & 5243-44, paras. 71-72.

[63] *See id.* at 5233-34, para. 53.

[64] *See id.* at 5233-35, paras. 53-54.

[65] *See id.* at 5208, para. 1.

[66] *See, e.g., Competitive Carrier First Report and Order*, 85 FCC 2d at 19, para. 51, & 20-21, paras. 55-56.

[67] *See LEC Classification Order*, 12 FCC Rcd at 15802-04, paras. 83-85.

20. We follow these precedents and begin our analysis by first defining the relevant product and geographic markets.[68] We then consider whether each BOC could exercise market power with respect to in-region, interstate and international, long distance services if they provide such services through an affiliate that is not compliant with section 272, by either: (1) unilaterally raising the retail price of its in-region, interstate, long distance services (*i.e.*, exercising "classical" market power);[69] or (2) using its control over bottleneck local facilities to raise its rivals' costs (*i.e.*, exercising "exclusionary" market power).[70] We conclude that the BOCs lack classical market power with respect to these services. We further conclude, however, that the BOCs have failed to demonstrate that they lack exclusionary market power with regard to these services by reason of their control of bottleneck facilities.

21. We note that the Commission recently performed a classical market analysis with respect to Qwest's in-region, interstate, long distance services in the *Qwest Section 272 Sunset Forbearance Order*, where it concluded that Qwest lacked classical market power in the provision of these services.[71] Nothing in the record in this proceeding compels a different finding with regard to Qwest. We therefore find it appropriate to rely on this prior Commission finding with respect to Qwest, and do not restate our prior analysis here. Consequently, our analysis in this Order of whether the BOCs possess classical market power in the provision of in-region, interstate, long distance services focuses on AT&T and Verizon.

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[68] A relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a "'small but significant and nontransitory' increase in price." Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, §§ 1.11, 1.12 (Apr. 2, 1992, revised Apr. 8, 1997) (*DOJ/FTC Guidelines*); *see also Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20605-06, para. 106 (2002) (*EchoStar/DirecTV Order*). A relevant geographic market has been defined "as the region where a hypothetical monopolist that is the only producer of the relevant product in the region would profitably impose at least a 'small but significant and nontransitory' increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change." *EchoStar/DirecTV Order*, 17 FCC Rcd at 20609, para. 117 (citing *DOJ/FTC Guidelines* § 1.21). We reject Americatel's request to establish a working group to commission studies to determine the relevant service market because the Commission has extensive expertise in defining telecommunications markets. *See* Americatel FNPRM Erratum Comments at 10. We also reject legacy BellSouth's suggestion that we need not conduct a detailed market analysis to determine whether the BOCs have market power. Legacy BellSouth FNPRM Comments at 5; *see, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5711-18, paras. 89-102 (2007) (*AT&T/BellSouth Order*); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18336-47, paras. 82-96 (2005) (*SBC/AT&T Order*); *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18477-86, paras. 82-97 (2005) (*Verizon/MCI Order*); *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217-20, paras. 15-20. We use the term "*BOC Merger Orders*" to refer collectively to the *SBC/AT&T Order*, the *Verizon/MCI Order*, and the *AT&T/BellSouth Order*.

[69] *See infra* parts III.A.1.a(iv)(a) (classical market power analysis for in-region, interstate, long distance services); III.A.1.b (classical market power analysis for in-region, international telecommunications services).

[70] *See infra* part III.A.1.c. Commenters generally support this analytic approach. *See, e.g.*, Legacy AT&T FNPRM Comments at 2, 8-11; Legacy BellSouth FNPRM Comments at 7-8; NJ Ratepayer FNPRM Comments at 2-3; Qwest FNPRM Comments at 7-8; VarTec *et al.* FNPRM Comments at 3-4; Verizon FNPRM Comments at 21-27; Legacy SBC FNPRM Comments at 15, 23-37; Americatel FNPRM Reply at 7-12.

[71] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5224-31, paras. 32-46.

a. Domestic, In-region, Interstate, Long Distance Services

(i) Relevant Product Markets

(a) Mass Market Services

22. Based on the record in this proceeding and consistent with the *AT&T/BellSouth Order*, the *AT&T/SBC Order*, the *Verizon/MCI Order*, and the *Qwest Section 272 Sunset Forbearance Order*,[72] we identify two relevant product markets for our mass market analysis: (1) stand-alone long distance services; and (2) bundled local and long distance services. Also, consistent with those orders, we consider both the demand for "access" and demand for "usage" when defining our relevant product markets.[73]

(i) Stand-Alone Long Distance Services

23. As the Commission found in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, we find here that long distance service purchased on a stand-alone basis is becoming a fringe market. Evidence of this includes the 2004 decision by legacy AT&T to cease marketing long distance services and the declining proportion of consumers that choose a long distance provider different

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[72] *AT&T/BellSouth Order*, 22 FCC Rcd at 5711-18, paras. 89-104; *SBC/AT&T Order*, 20 FCC Rcd at 18336-46, paras. 82-99; *Verizon/MCI Order*, 20 FCC Rcd at 18477-87, paras. 83-100; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217-20, paras. 15-20. In prior proceedings, the Commission has defined mass market customers as residential and small business customers that purchase standardized offerings of communications services. *See, e.g.*, *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18040, para. 24 (1998) (*WorldCom/MCI Order*); *Application of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14746, para. 68 (1999) (*SBC/Ameritech Order*). We reject commenters' suggestions that we adopt a different approach for identifying relevant mass market services because these commenters do not explain why their proposed approaches would improve our mass market analysis. *See, e.g.*, Americatel FNPRM Comments at 10 (requesting that a working group be established to commission studies to determine the relevant mass market service categories); Legacy BellSouth FNPRM Comments at 5 (claiming that the Commission need not engage in a detailed market analysis).

[73] *AT&T/BellSouth Order*, 22 FCC Rcd at 5670-71, paras. 16-17; *SBC/AT&T Order*, 20 FCC Rcd at 18336-37, para. 84; *Verizon/MCI Order*, 20 FCC Rcd at 18477-78, para. 85; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5218, para. 17. As the Commission explained, a consumer requires "access" in order to connect to a communications network, whether it be a wireline telephone network, a mobile wireless network, or the public Internet. Because a mass market consumer today can choose one or more access providers, his demand for usage – *i.e.*, how much of a service he actually consumes – will be determined by the set of access providers he has chosen, the prices and terms set by those access providers, and other personal characteristics of the consumer. Thus, for example, if a consumer has a wireless phone, a wireline phone, and a broadband connection plus an interconnected voice over Internet Protocol (VoIP) service subscription, he can make a long distance call either using his wireline or wireless phones or through the broadband connection using his VoIP subscription. To the extent that consumers view these choices as reasonable substitutes, they are in the same product market for purposes of our analysis. *See EchoStar/DirecTV Order*, 17 FCC Rcd at 20606, para. 106. While some commenters express concern about the inclusion of services provided over alternative platforms such as wireless or VoIP because they might not act as a competitive constraint, consistent with our precedent, we include such services in our product markets only to the extent that they are, in fact, a substitute for the BOCs' and their independent incumbent LEC affiliates' services for access and/or usage. *See, e.g.*, Sage FNPRM Comments at 9-15; NJ Ratepayer FNPRM Reply at 2-3; Legacy AT&T FNPRM Comments at 16-18; VarTec *et al.* FNPRM Comments at 5; Sprint FNPRM Comments at 4; Legacy MCI FNPRM Reply at 4-5.

from their local service provider.[74] Nonetheless, out of an abundance of caution and to ensure consistency with Commission precedent,[75] we analyze stand-alone interstate long distance as a separate relevant product market.

24. As discussed below, we consider two alternative measures of market share in analyzing stand-alone long distance services. The first measure considers only consumers with a presubscribed wireline long distance carrier. This approach is consistent with the approach the Commission adopted in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order.*[76] We recognize that this approach is overly narrow, however, and will tend to overstate AT&T's and Verizon's market positions, because it ignores two important factors: the ability of all presubscribed interexchange customers to make interstate, long distance calls using transaction services, such as prepaid calling cards and dial-around services; and the fact that a majority of these customers also subscribe to mobile wireless service and can make interstate, long distance calls using their wireless phones.[77] In order to capture the possibility of such usage substitution, we therefore also perform a second market share calculation, which attempts to take into account the ability of presubscribed customers to engage in usage substitution.[78]

[74] In the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, the Commission determined that the stand-alone market was becoming a fringe market based upon documentary evidence submitted in those proceedings. There is no information in this proceeding that causes us to reconsider this conclusion. *See AT&T/BellSouth Order*, 22 FCC Rcd at 5715-16, para. 97; *SBC/AT&T Order*, 20 FCC Rcd at 18342, para. 91; *Verizon/MCI Order*, 20 FCC Rcd at 18483, para. 92; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217, para. 16.

[75] *See AT&T/BellSouth Order*, 22 FCC Rcd at 5715-17, paras. 97-100; *SBC/AT&T Order*, 20 FCC Rcd at 18336, para. 82; *Verizon/MCI Order*, 20 FCC Rcd at 18477, para. 83; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5217-19, paras. 16-18.

[76] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5218, para. 17; *AT&T/BellSouth Order*, 22 FCC Rcd at 5711, para. 89, n.261; *SBC/AT&T Order*, 20 FCC Rcd at 18347, n.309; *Verizon/MCI Order*, 20 FCC Rcd at 18489, n.308.

[77] *See, e.g., Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5218, para. 17 (finding that customers substitute, at least to some extent, mobile wireless services and transaction services for long distance calls made through their presubscribed wireline carrier); *AT&T/BellSouth Order*, 22 FCC Rcd at 5716-17, paras. 98-100; *SBC/AT&T Order*, 20 FCC Rcd at 18342-44, paras. 92-94 (same); *Verizon/MCI Order*, 20 FCC Rcd at 18484-85, paras. 93-95 (same); *see also* Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 2 and Attach. at 4 (filed Apr. 24, 2007) (AT&T Apr. 24, 2007 *Ex Parte* Letter) (stating that as of December 2005, more than 70 percent of households in the United States have a wireless phone).

[78] Our consideration of these two alternative market share measures responds to certain parties' concerns regarding the treatment of mobile wireless services in the analysis. *Compare, e.g.*, Sage Comments at 9-10 (arguing that our analysis should not include mobile wireless services) *with, e.g.*, Letter from Brett A. Kissel, Associate Director, Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. at 12-15 (filed Dec. 16, 2003) (arguing that we must consider the effects of mobile wireless services on the demand for wireline interexchange telecommunications services); Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. 2 at 2-3 (filed Oct. 21, 2003); Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. at 7-10 (Feb. 13, 2004). We note that, because of limitations in available data, our calculations do not include over-the-top VoIP services or transaction services (such as prepaid calling cards). The exclusion of these services will tend to overstate AT&T's and Verizon's market positions. For the reasons given in the *BOC Merger Orders*, we reject Verizon's assertion that email and instant messaging are significant competitive alternatives to traditional wireline services provided to mass market consumers. *Compare, e.g.*, Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 12-13 (filed Feb. 15, 2007) (Verizon Feb. 15, 2007 *Ex Parte* Letter) *with, e.g., SBC/AT&T* (continued....)

25. In prior orders, the Commission has found that it may be appropriate to define narrower relevant product markets based on customer class if service providers engage in price discrimination.[79] Both the record and the long distance carriers' web sites indicate that carriers generally offer multiple alternative long distance service packages to mass-market customers, which vary in terms of their monthly recurring charges and per-minute charges.[80] These alternative packages appear designed to appeal to customer groups with differing demand patterns for long distance services. While such pricing plans generally benefit consumers, we believe that certain consumers who make relatively few interstate, long distance calls and who do not subscribe to mobile wireless service or broadband Internet access service in addition to their wireline long distance provider, may not face the same wide choice of alternative providers. Moreover, although there is insufficient information in the record for us to conclude that such customers constitute a separate relevant product market, we are concerned, as was the Commission in the *AT&T Reclassification* and the *Qwest Section 272 Sunset Forbearance Orders*,[81] that competition for such customers may not be as intense as it is for higher volume interstate, long distance users.

(ii) Bundled Local and Long Distance Services

26. Consistent with the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, we also find it appropriate to define and examine a separate relevant product market for bundled local and long distance services.[82] Because of the varied marketing strategies and limitations in the available data, we define a local and long distance service bundle,[83] for purposes of this proceeding only,

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Order, 20 FCC Rcd at 18342, para. 91, n.282 (recognizing that email and instant messaging have qualitative differences from voice services); *Verizon/MCI Order,* 20 FCC Rcd at 18484, para. 92 n.282 (same).

[79] *See, e.g., SBC/AT&T Order,* 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Order,* 20 FCC Rcd at 18465, para. 60; *see generally DOJ/FTC Guidelines* at § 1.12.

[80] For example, Verizon offers a number of unlimited all-distance domestic calling plans for $35 to $50 per month; a usage-based plan with a $6 monthly recurring charge and a $0.05 per minute usage-based charge; and a usage-based plan with a $3 monthly recurring charge and a $0.10 per minute usage-based charge (for consumers that also purchase a qualifying local service plan). *See* Verizon Feb. 15, 2007 *Ex Parte Letter*, Ex. 6; http://www22.verizon.com/ForYourHome/sas/sas_localplans.aspx (visited May 2, 2007). AT&T offers an unlimited all-distance calling plan for approximately $33.00 per month and a usage based plan with a $2.99 monthly recurring charge and a $0.10 per minute usage-based charge. *See* http://www.consumer.att.com/plans/long_distance (visited May 2, 2007).

[81] *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72; *AT&T Reclassification Order*, 11 FCC Rcd at 3315-16, paras. 84-85.

[82] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5219-20, paras. 19-20; *AT&T/BellSouth Order*, 22 FCC Rcd at 5717-18, paras. 101-02; *SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18485-86, paras. 95-96 (concluding that it no longer makes sense for the Commission to subdivide the mass market into discrete product markets for local and long distance voice services); *see also* Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. (filed May 26, 2004); Letter from Brett A. Kissel, Associate Director, Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. at 4-12 (filed Dec. 16, 2003); Letter from Dee May, Vice President-Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach at 13-14 (filed July 9, 2004).

[83] The economics literature generally discusses two types of bundles: a pure bundle, where the bundled services are only sold together and are not sold individually; and a mixed bundle, where the bundled services are sold individually, as well as in a package. In a mixed bundle, the package generally is sold at a discount relative to the sum of the individual service component prices. *See, e.g.*, Barry Nalebuff, *Bundling, Tying and Portfolio Effects,* DTI Economics Paper No. 1, at 14-15 (2003), *available at* http://www.dti.gov.uk/files/file14774.pdf. There is
(continued….)

as a customer's purchase of local and long distance services from the same carrier, regardless of whether these services are purchased together as part of an advertised bundle from a single carrier or the consumer creates the bundle by selecting separately-offered local and long distance service plans from the same provider. The evidence indicates that a majority of consumers purchase local and long distance services from a single provider today and that this percentage has been increasing over time.[84] We find that this trend is likely to continue and that the stand-alone wireline long distance market is steadily declining in size relative to the bundled services market.[85]

27. Several other factors support our defining a separate relevant product market for bundled local and long distance services. First, the Commission recently determined that the BOCs' marketing and pricing strategies are designed to encourage subscription to a bundled service package.[86] Second, the Commission has recently determined, and the evidence in this record indicates, that intermodal competition between wireline services and services provided on alternative service platforms, such as

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significant variation across providers as to whether they offer a pure bundle or a mixed bundle of communications services.

[84] As of June 2006, 59 percent of regional BOC retail local consumer lines and 85 percent of competitive local service lines were presubscribed to the local provider's long distance service, compared with 52 percent of regional BOC lines and 80 percent of competitive local service lines as of June 2005. *See* Local Telephone Competition: Status as of June 30, 2006, at Table 6 (Industry Analysis and Technology Div., WCB Jan. 2007) (*2007 Local Competition Report*); Local Telephone Competition: Status as of June 30, 2005, at Table 6 (Industry Analysis and Technology Div., WCB Apr. 2006) (*2006 Local Competition Report*); *see also SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18485-86, paras. 96-97. As of December 2006, the proportion of Verizon's and AT&T's residential local consumer lines that also were pre-subscribed to the carrier's long distance services were respectively **[REDACTED]** and **[REDACTED]**. Figures are calculated from data submitted in this record. *See* Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exhs. 1.A.1, 1.A.2 (filed Mar. 27, 2007) (Verizon Mar. 27, 2007 *Ex Parte* Letter); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exhs. 1.A.1.a, 1.A.2.a (filed Apr. 3, 2007) (Verizon Apr. 3, 2007 *Ex Parte* Letter); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exh. 1.A.1.b (filed Apr. 5, 2007) (Verizon Apr. 5, 2007 *Ex Parte* Letter); Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 2 (filed Apr. 17, 2007) (Verizon Apr. 17, 2007 *Ex Parte* Letter) ("MCI is the presubscribed long-distance carrier to approximately **[REDACTED]** of residential lines for which MCI is the local provider"); Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exhs. 1.a, 1.a.i, 1.a.ii, 1.d, 1.f, and 2 (filed Apr. 23, 2007) (AT&T Apr. 23, 2007 *Ex Parte* Letter).

[85] We note that the Commission had anticipated that a bundled product market might become a relevant product market sometime after the BOCs completed the section 271 process. *See, e.g.*, *Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20010-11, paras. 39-42 (1997) (*Bell Atlantic/NYNEX Order*); *WorldCom/MCI Order*, 13 FCC Rcd at 18038-39, para. 22 n.60. Verizon completed the section 271 process in March 2003 and AT&T completed the section 271 process in October 2003. *See Section 272 Sunsets for Verizon Communications Inc. in the District of Columbia and the States of Maryland and West Virginia by Operation of Law on March 19, 2006 Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, 21 FCC Rcd 2949 (WCB 2006); *Section 272 Sunsets for AT&T in the States of Illinois, Indiana, Ohio and Wisconsin by Operation of Law on October 15, 2006, Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, 21 FCC Rcd 11738 (WCB 2006).

[86] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5219-20, para. 20; *AT&T/BellSouth Order*, 22 FCC Rcd at 5717-18, para. 102; *SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18486, para. 97.

facilities-based VoIP and mobile wireless, has been increasing and is likely to continue to increase.[87] These intermodal services tend to be offered as a bundle of local and long distance services.[88] These findings suggest that competition is increasingly occurring between bundled offerings, rather than between a bundled package offered by an intermodal competitor and stand-alone local and long distance services offered by incumbent LECs.

(b) Enterprise Services

28. Retail enterprise customers purchase a variety of different communications services, including local voice, long distance and international voice, and data services.[89] In addition, enterprise customers frequently purchase high-capacity transmission services,[90] including Frame Relay,[91] Asynchronous Transfer Mode (ATM),[92] Gigabit Ethernet,[93] and similar services provided via emerging

[87] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5219-20, para. 20; *AT&T/BellSouth Order*, 22 FCC Rcd at 5717-18, para. 102; *SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18486, para. 97; *see also 2007 Local Competition Report*, at Table 2.

[88] Promotional information for facilities-based VoIP providers generally appears to focus on bundled offerings. *See, e.g.*, Optimum Voice, What is It?, *available at* http://www.optimum.com/voice/what.jsp (visited Feb. 16, 2007) (Cablevision's product "offers unlimited local, regional and long-distance calling within the United States, Puerto Rico and Canada"); Comcast, Services for You, *available at* http://www.comcast.com/Benefits/VoiceBenefits.ashx?.link1k=59 (visited Feb. 16, 2007) (offering "unlimited local and long distance"); Time Warner Cable, Unlimited Calling, *available at* http://www.timewarnercable.com/corporate/products/digitalphone/unlimitedcallingdigitalphone.html (visited Feb. 16, 2007) (offering "unlimited calls anywhere in the U.S. and Canada for one low monthly price"). Mobile wireless service providers likewise promote bundled offerings. *See, e.g.*, Cingular Wireless, Cingular Plans, *available at* http://www.cingular.com/cell-phone-service/cell-phone-plans/?_requestid=87830 ("Never pay domestic long distance or roaming charges!"); T-Mobile, T-Mobile Stick Together, *available at* http://www.t-mobile.com/templates/generic.aspx?passet=Pln_Lst_MyFavesLrnDemo ("Unlimited nationwide calling to any five numbers* on any network, even landlines."); Verizon Wireless, America's Choice, *available at* http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanList&sortOption=priceSort&typeId=1&subTypeId=1&catId=323 ("Unlimited Domestic Long Distance").

[89] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18321-22, para. 57; *Verizon/MCI Order*, 20 FCC Rcd at 18463, para. 56.

[90] The specific technology used by the individual enterprise customer depends on availability, needed capacity, services required, and desired service quality levels. Enterprise services could include multiple DS0 circuits or high-capacity circuits of DS1 or higher bandwidth, such as DS3 and OCn circuits. *See, e.g., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17155-56, para. 298 (2003) (*Triennial Review Order*) (discussing services typically purchased by enterprise customers). A DS0 is a two-wire basic connection, which operates at 64,000 bits per second (bps), the worldwide standard speed for digitizing voice conversation using pulse code modulation. HARRY NEWTON, NEWTON'S TELECOM DICTIONARY, 324 (22nd ed., 2006) (defining "DS-0") (NEWTON'S TELECOM DICTIONARY). A DS1 is a four-wire connection equivalent to 24 DS0s. A DS3 is equivalent to 28 DS1s. These circuits may be purchased by customers from state and federal tariffs. *See Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298.

[91] Frame Relay is a data service that allows local area networks (LANs) to be connected across a public network. *See* TELECOMMUNICATIONS INDUSTRY ASSOCIATION, 2006 TELECOMMUNICATIONS MARKET REVIEW AND FORECAST 138 (2006) (TIA 2006 MARKET REVIEW). A T-1 provides the same speed and capacity service as a DS1. *See Triennial Review Order*, 18 FCC Rcd at 17104-05, para. 202 n.634. Similarly, a T-3 provides the same speed and capacity service as a DS3.

[92] ATM service can guarantee different quality of service levels to meet various customer needs. ATM offers higher reliability and greater capacity because it combines the advantages of circuit-switched and packet-switched (continued....)

technologies.[94] Retail enterprise customers also purchase other facilities and customer premises equipment (CPE).[95]

29. Consistent with Commission precedent and with the record in this proceeding,[96] we find that the services offered to enterprise customers fall into a number of separate relevant product markets. More specifically, we find that long distance voice and data services constitute distinct relevant product markets.

30. We have less information about the substitutability of different transmission services. Although there are data indicating that the number of customers for Frame Relay is declining on a nationwide basis, and that the number of IP transmission services customers is increasing,[97] we do not have data on elasticities (and cross elasticities) of demand for particular transmission services. Similarly, we lack sufficient information about the migration time, price differences, and service quality differences that customers face when deciding to change from one transmission service to another. Thus, the evidence is insufficient for us to define precisely the boundaries of those transmission service markets. Given the data available in the record, and for purposes of this proceeding only, we focus on five interstate services: long distance voice services, ATM, Frame Relay, T1, and T3 services.[98]

(Continued from previous page)
networks, guaranteeing the delivery of information that is intolerant of delays, while allocating bandwidth more efficiently. *See* TIA 2006 MARKET REVIEW at 140-42.

[93] Gigabit Ethernet is a LAN standard that allows a network to accommodate the high-bandwidth requirements of converged voice, video, and data network applications. *See* TIA 2006 MARKET REVIEW at 125.

[94] Enterprises are increasing their use of IP Virtual Private Networks (IP-VPNs), which deliver private network services over shared IP-based backbones; and carriers are migrating to Multiprotocol Label Switching (MPLS), which provides label switching to move packets between network locations. *See* TIA 2006 MARKET REVIEW at 134-36. MPLS is similar to other circuit-switched, ATM, and Frame Relay network protocols, except that MPLS is not dependent on a particular technology. *See, e.g.*, MPLS Resource Center, *The MPLS FAQ*, available at http://www.mplsrc.com/faq1.shtml#MPLS%20History (visited July 31, 2006).

[95] *See SBC/AT&T Order*, 20 FCC Rcd at 18322, para. 57.

[96] *See SBC/AT&T Order*, 20 FCC Rcd at 18322, para. 58; *Verizon/MCI Order*, 20 FCC Rcd at 18464, para. 58; *see also* AT&T Apr. 23, 2007 *Ex Parte* Letter, Exhs. 3, 4; Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Attach. (filed May 1, 2007) (AT&T May 1, 2007 *Ex Parte* Letter); Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27; Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Exh. 4.5 (filed Apr. 19, 2007) (Verizon Apr. 19, 2007 *Ex Parte* Letter).

[97] From 1997 through 2002, the number of Frame Relay ports more than tripled to 1.3 million; since then, however, the market has shifted to IP-VPNs, and Frame Relay port growth has dropped. *See* TIA 2006 MARKET REVIEW at 140. From 2000 through 2005, ATM service revenues nearly tripled, from $1.1 billion to $2.70 billion. *Id.* at 143. The number of ATM ports in the United States reached a peak of 40,000 in 2005, however, and that number was expected to decline thereafter. *Id.* at 142. As newer technologies emerge, ATM's role as a backbone technology appears to be declining as enterprise customers increase their use of IP-VPNs. *Id.*

[98] Our analysis of particular product markets is determined by the availability of data in this record. AT&T May 1, 2007 *Ex Parte* Letter, Attach; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data). AT&T and Verizon have independently provided data for their regions from a third party vendor (Harte-Hanks). These data are based on a telecommunications survey that queries businesses about their contracting for services, including long distance voice services, ATM, Frame Relay, T1, and T3 services. Harte-Hanks surveys businesses on a rolling basis throughout the year and periodically updates the information for each business in its survey. The data AT&T and Verizon provided was extracted from the Harte-Hanks database during April 2007. (continued….)

31. In previous orders, the Commission has found it appropriate to define separate relevant product markets based on the class of customer (particularly where there is "price discrimination").[99] As the Commission previously has discussed, however, there does not appear to be industry-wide consensus as to how to differentiate one class of enterprise customers from another.[100] The Commission generally has found that a number of factors influence how carriers price their services to particular types of customers, including: the customer's total telecommunications spending; the types of services and technologies ordered; the customer's total employee count; the customer's total annual revenues; and whether the customer obtains customized services.[101] Based on the data available to us in the record, we find it appropriate to focus our analysis on two categories of business customers: small/medium businesses and large enterprises.[102]

(ii) Relevant Geographic Markets

32. The Commission previously has recognized that each customer location constitutes a separate relevant geographic market. For reasons of administrative practicality, however, the Commission has aggregated customers facing similar competitive choices to create larger relevant geographic markets.[103]

(Continued from previous page)
See Letter from Michelle Sclater, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1 (filed May 9, 2007) (AT&T May 9, 2007 *Ex Parte* Letter); Verizon May 8, 2007 *Ex Parte* Letter, at 2. In general, we limit our analysis to geographic areas with at least 30 observations. We exclude the "UNSPECIFIED" category from our analysis because it represents incomplete responses. *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5221-22, para. 23 n.82.

[99] *See, e.g., Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222, para. 24; *AT&T/BellSouth Order*, 22 FCC Rcd at 5699, para. 66; *SBC/AT&T Order*, 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Order*, 20 FCC Rcd at 18465, para. 60.

[100] *See, e.g., Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222, para. 24; *AT&T/BellSouth Order*, 22 FCC Rcd at 5699, para. 66; *SBC/AT&T Order*, 20 FCC Rcd at 18323-24, para. 61; *Verizon/MCI Order*, 20 FCC Rcd at 18465-66, para. 61; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 3; AT&T May 1, 2007 *Ex Parte* Letter, Attach; Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27.

[101] *See, e.g., Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222, para. 24; *AT&T/BellSouth Order*, 22 FCC Rcd at 5699, para. 66; *SBC/AT&T Order*, 20 FCC Rcd at 18323-24, para. 61; *Verizon/MCI Order*, 20 FCC Rcd at 18465-66, para. 61; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 3; AT&T May 1, 2007 *Ex Parte* Letter, Attach; Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27.

[102] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18323-24, para. 61; *Verizon/MCI Order*, 20 FCC Rcd at 18465-66, para. 61; AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 3; AT&T May 1, 2007 *Ex Parte* Letter, Attach; Verizon Mar. 27, 2007 *Ex Parte* Letter, Attach. at 26-27. Our analysis of particular enterprise customer classes is determined by the availability of data in this record. The Harte-Hanks customer count data for enterprise customers submitted by AT&T and Verizon is segmented into **[REDACTED]**. *See* AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (state franchise data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data). These business segments do not, however, generally conform to the categorization schemes used by AT&T or Verizon, and in a number of cases include markets with fewer than 30 observations. We therefore analyze two customer classes utilizing aggregated Harte-Hanks data: small/medium and large.

[103] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222-23, paras. 25-28; *AT&T/BellSouth Order*, 22 FCC Rcd at 5700-01, paras. 68-69 & 5718, paras. 103-104; *SBC/AT&T Order*, 20 FCC Rcd at 18324, para. 62 & 18345-46, paras. 97-99; *Verizon/MCI Order*, 20 FCC Rcd at 19466-67, paras. 62-63, & 18486-87, paras. 98-100. Our market analyses above and in the *Qwest Section 272 Sunset Forbearance Order* consider the competitive circumstances in each BOC in-region state, and therefore respond to certain parties' arguments that the levels of competition in particular states require that we maintain the safeguards in those states.

(a) Mass Market Services

33. The data in the record are not sufficiently detailed to define localized relevant geographic markets in which customers face similar competitive choices. Accordingly, consistent with the approach adopted in, and for the reasons given in, the *BOC Merger Orders*, we analyze stand-alone long distance and bundled local and long distance services for each BOC in their respective franchise area within a state.[104]

(b) Enterprise Services

34. The data in the record are likewise not sufficiently detailed to define localized relevant geographic markets in which all enterprise customers face the same competitive choices. Consistent with Commission precedent, we will use the most disaggregated data available in performing our structural analysis for different types of business services and for certain broad classes of business customers. For enterprise customers with single locations in AT&T's and Verizon's respective regions, we use the most disaggregated data in this record to complete our analysis. Consequently, for AT&T we analyze state-wide and MSA-level data; and for Verizon we analyze franchise area data and MSA-level data to determine their market presence for the services and customer classes considered in this Order.[105]

35. For larger, multi-location enterprise customers, we find that these customers typically seek service from a provider that can serve all their locations, and generally only a few carriers serving a particular location have such capabilities. In light of the fact that there are relatively few providers that can offer a high level of ubiquitous service, the Commission in previous orders has concluded that this geographic market should encompass all the geographic locations where these multi-location business

[104] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222-23, para. 26; *AT&T/BellSouth Order*, 22 FCC Rcd at 5718, para. 104; *SBC/AT&T Order*, 20 FCC Rcd at 18346, para. 99; *Verizon/MCI Order*, 20 FCC Rcd at 18487, para. 100. We reject the BOCs' suggestions that we define the relevant geographic market for mass market services as the nation or their respective regions. *See, e.g.*, Verizon FNPRM Reply at 17 (calculating market shares on a national basis). Although the Commission only distinguished between a BOC's in-region territory and its out-of region territory in the *LEC Classification Order*, the Commission stated that "the market to purchase [a long distance] plan is a localized market, not a national one." *LEC Classification Order*, 12 FCC Rcd at 15794, para. 66; *see also SBC/AT&T Order*, 20 FCC Rcd at 18345-46, paras. 97-98; *Verizon/MCI Order*, 20 FCC Rcd at 18486-87, paras. 98-99. We further recognize that the competitive choices customers face may vary within a state (*e.g.*, cable companies may provide cable VoIP in some areas of a state but not others), and that a BOC might be able to offer more localized promotions for bundled service offerings. Although these factors suggest that we should define the relevant geographic market at a more disaggregated level than a BOC's or independent incumbent LEC's franchise area within each of its in-region states, the data in the record are not sufficiently detailed for us to perform such a disaggregated analysis. We find, however, as we did in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*, that analyzing the data at the franchise level is reasonable, particularly given that AT&T's and Verizon's pricing for stand-alone long distance service does not vary within their respective franchise areas. *See* http://www22.verizon.com/Residential/Phone/Long+Distance/Long+Distance.htm (visited May 7, 2007); http://www.att.com/gen/general?pid=7908 (visited May 7, 2007).

[105] AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA-level data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data). To avoid relying on results that are based on too few observations, we present results only for those markets for which there are at least 30 observations. *See, e.g., Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5222-23, para. 26, n.88; *SBC/AT&T Order*, 20 FCC Rcd at 18324-25, para. 62 (same).

customers may have a presence.[106] Thus, we analyze national data for long distance services provided to these multi-location businesses.[107]

(iii) Market Participants

(a) Mass Market

36. The record indicates that Verizon and AT&T face competition within their respective franchise areas from a variety of providers of retail mass market services. These competitors include competitive wireline local exchange and long distance carriers, stand-alone long distance providers, facilities-based VoIP providers, cable circuit-switched service providers, and wireless carriers, to the extent that consumers use their services as a replacement for local or long distance services.[108]

(b) Enterprise Market

37. Likewise, the record indicates that there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, data/IP network providers, cable companies, other incumbent LECs, and VoIP providers.[109]

(iv) Analysis of Traditional Market Power Factors

38. We consider first whether Verizon and AT&T individually have such a significant presence in the relevant markets for interstate, long distance services that either could unilaterally and profitably raise and maintain the price of such services within their respective franchise areas. Our analysis examines these BOCs' respective market shares for the aforementioned relevant product markets, trends in their market shares, demand substitutability, and supply substitutability.[110]

(a) Mass Market Services

39. We conclude that Verizon and AT&T each lack classical market power with respect to the mass market interstate, long distance services within their respective franchise areas. Although the market share calculations for stand-alone interstate, long distance services indicate a moderately high level of concentration in certain franchise areas, we find that these calculations significantly overstate their respective market positions in those markets, particularly when one considers other market factors that affect market power.[111] As discussed in greater detail below,[112] we are concerned, as was the

[106] *See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63.

[107] The Commission previously has recognized that large business customers with multiple locations throughout the United States may constitute a separate relevant product market. *See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63; AT&T May 1, 2007 *Ex Parte* Letter, Exh. 5a.

[108] As discussed below, we do not include over-the-top VoIP in this market analysis because of data limitations. *See infra* para. 41. This will tend to result in an overstatement of Verizon's and AT&T's respective market shares.

[109] *See, e.g.*, AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state data and MSA data); AT&T May 1, 2007 *Ex Parte* Letter, Attach.; Verizon Apr. 19, 2007 *Ex Parte* Letter, Exh. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA data).

[110] As indicated previously, *see supra* para. 20, we rely in this Order on the Commission's prior finding, in the *Qwest Section 272 Sunset Forbearance Order*, that Qwest lacks classical market power in the provision of in-region, interstate, long distance services. Therefore, the analysis below focuses on AT&T and Verizon.

[111] We find it appropriate to rely on the more recent data cited in this Order, rather than market share estimates cited by the Commenters. *See, e.g.*, Legacy AT&T FNPRM Reply at 27-28; Texas AG FNPRM Comments at 2; Texas Commission FNPRM Comments at 4-5; Legacy AT&T June 8, 2004 *Ex Parte* Letter, Attach. Declaration of Lee Selwyn, para. 32 and Appendix.

Commission in the *AT&T Reclassification Order* and the *Qwest Section 272 Sunset Forbearance Order*,[113] that residential customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service may have fewer competitive choices among interstate, interLATA long distance providers and may be unable to avoid the impact of a price increase by engaging in usage substitution. We also are concerned that these customers may not receive the information regarding their monthly long distance usage that they need to make informed choices among alternative long distance calling plans.

(i) Stand-Alone Long Distance Market Share

40. Consistent with the Commission's analysis in the *BOC Merger Orders*, we first consider AT&T's and Verizon's market shares of wireline customers that have a presubscribed interexchange carrier (PIC).[114] Using this methodology, the data in the record suggest that Verizon and AT&T have significant market shares in most of their franchise areas within their respective territories.[115] Under this approach, AT&T's market share of stand-alone, interstate, long distance services ranges from **[REDACTED]** percent to **[REDACTED]** percent, with a median market share of **[REDACTED]** percent.[116] The respective figures for Verizon are **[REDACTED]** percent, **[REDACTED]** percent, and **[REDACTED]** percent.[117]

41. As discussed above, however, these market shares likely overstate AT&T's and Verizon's respective shares of the interstate long distance market, and their potential market power, for a number of reasons. First, this analysis is limited to customers who have a PIC. In recent years, however, an increasing number of customers are choosing to have no PIC. For example, **[REDACTED]** of AT&T's

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[112] *See infra* paras. 47-48.

[113] *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72; *AT&T Reclassification Order*, 11 FCC Rcd at 3313-14, paras. 81-82.

[114] *See AT&T/BellSouth Order*, 22 FCC Rcd at 5720, n.308; *SBC/AT&T Order*, 20 FCC Rcd at 18347, n.309; *Verizon/MCI Order*, 20 FCC Rcd at 18489, n.308.

[115] Appendix B, Table 1, Note 1, Table 2, and Note 4. Our analysis of concentration in the mass market relies upon data for residential customers because of the administrative difficulty of distinguishing small business data from data for other classes of businesses. An analysis of market shares of residential consumers is likely to accurately represent an analysis of market shares for the entire mass market because residential customers and small businesses have similar demand patterns are served primarily through mass marketing techniques, purchase similar volumes and types of communications services, and would likely face the same competitive alternatives within a geographic market. Thus, we conclude that a market share analysis for residential consumers is likely to accurately represent Verizon's and AT&T's respective positions in the mass market as a whole. *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18347, para. 102, n.307; *Verizon/MCI Order*, 20 FCC Rcd at 18488, para. 103, n.306.

[116] Appendix B, Table 1. We base our analysis of the stand-alone long distance market on AT&T's and Verizon's telephone exchange service customers with a PIC, AT&T's and Verizon's interexchange customers that do not subscribe to AT&T's and Verizon's local service, the number of resold lines leased by the BOC's competitors, the number of commercially negotiated lines leased by AT&T's and Verizon's competitors, and the BOC's estimates of facilities-based lines. *See* Appendix B, Notes 1 and 4. This analysis implicitly assumes that customers that receive local services from a competitive local service provider generally subscribe to that carrier for their interstate, long distance services. We believe this to be a reasonable assumption given that 85 percent of residential lines receiving service from a competitive LEC are presubscribed to the competitive LEC's long distance services. *2007 Local Competition Report*, at Table 6.

[117] Appendix B, Table 2.

residential customers and **[REDACTED]** of Verizon's residential customers have no PIC.[118] More importantly, this approach to calculating market shares fails to take into account possible usage substitution between wireless and wireline long distance services (for customers that subscribe to both wireless and wireline telephone services) or between wireline and over-the-top VoIP (for customers that subscribe to both wireline telephone service and broadband Internet access service). Although we lack the data necessary to estimate the impact of usage substitution between traditional wireline long distance service and long distance service provided by *over-the-top VoIP*, we can calculate market shares in a way that attempts to capture usage substitution between wireline and *wireless* long distance service providers.[119] Taking such wireline-wireless usage substitution into account, AT&T's market share ranges from **[REDACTED]** percent to **[REDACTED]** percent, with a median market share of **[REDACTED]** percent.[120] The corresponding figures for Verizon's residential customers are **[REDACTED]** percent, **[REDACTED]** percent, and **[REDACTED]** percent.[121] Given the large and growing percentage of consumers who subscribe to both wireline service and wireless or broadband Internet access service,[122] and who thus have the ability to shift interstate, long distance usage in response to price changes, we find that these market share numbers are likely to provide a more accurate picture of AT&T's and Verizon's market power for the stand-alone, interstate, long distance market within their respective franchise areas.[123]

(ii) Bundled Local and Long Distance Market Shares

42. As discussed above, an increasing number of customers are shifting to bundled service offerings and away from stand-alone long distance offerings. We acknowledge the conceptual difficulties associated with estimating market shares for this bundled services market; nevertheless, we believe that we have adopted a conservative approach, which, if anything, will again tend to overstate AT&T's and

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[118] We follow the procedure set forth in Appendix B, Notes 1 and 4, to calculate these percentages. *See* AT&T Apr. 23, 2007 *Ex Parte* Letter, Exhs. 1.a, 1.a.i, 1.a.ii, 1.d, 1.f, 2; Verizon Mar. 27, 2007 *Ex Parte* Letter, Exhs. 1.A.1, 1.A.2, 1.A.4; Verizon Apr. 3, 2007 *Ex Parte* Letter, Exh. 1.A.1.a, 1.A.1.b, 1.A,2.a; Verizon Apr. 13, 2007 Exh. 2 Supplement *Ex Parte* Letter, Exh. 2B.

[119] This analysis focuses on those customers that subscribe to *both* a wireline and a mobile wireless service. Our analysis assumes that 10 percent of households have "cut-the-cord" (*i.e.*, no longer subscribe to local or long distance service from a wireline carrier), and that 70 percent of households subscribe to a mobile wireless services provider. *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5225-26, para. 34; AT&T Apr. 24, 2007 *Ex Parte* Letter at 2, Attach. at 4 (citing December 2005 Yankee Report that 70 percent of households have a mobile wireless phone). We follow the procedure set forth in Appendix B, notes 2 and 5, to estimate AT&T's and Verizon's market shares.

[120] Appendix B, Tables 1 and 2.

[121] Appendix B, Tables 1 and 2.

[122] *See* AT&T Apr. 24, 2007 *Ex Parte* Letter at 2, Attach. at 4 (citing December 2005 Yankee Report that 70 percent of households have a mobile wireless phone); *High-Speed Services for Internet Access: Status as of June 30, 2006*, at Table 3 (Industry Analysis and Technology Div., WCB Jan. 2007) (*High-Speed Services Jan. 2007 Report*), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf.

[123] We note that, while our analysis is intended to focus on consumers that subscribe to both a mobile wireless service and a wireline long distance service and thus can engage in usage substitution, our methodology makes a number of simplifying assumptions, including: failing to exclude wireline consumers that do not subscribe to a mobile wireless service; and failing to exclude consumers with mobile wireless plans that have a wireline service but no wireline presubscribed interexchange carrier. We conclude the offsetting effects of these simplifications are likely to result in a slight overestimate of AT&T's and Verizon's market share.

Verizon's respective market positions.[124] We estimate that, for its franchise areas within its in-region states, AT&T's market share of bundled local and long distance services ranges from **[REDACTED]** percent to **[REDACTED]** percent, with a median market share of **[REDACTED]** percent.[125] The corresponding figures for Verizon's residential customers are **[REDACTED]** percent, **[REDACTED]** percent, and **[REDACTED]** percent.[126]

(iii) Other Factors

43. Traditionally, the Commission, in evaluating whether a carrier possesses individual market power, has considered not only current market share, but also such factors as trends in market share, elasticity of demand, and elasticity of supply.[127] Consideration of these factors further supports our conclusion that AT&T and Verizon each lack individual market power with respect to mass market, interstate, long distance services within their respective franchise areas.

44. We begin by considering trends in market shares. We acknowledge that AT&T's and Verizon's shares of the stand-alone long distance market, measured in terms of presubscribed wireline customers, have increased over the past three years. Although such increases might normally be indicative of market power, there are several reasons to reject such an inference here. First, since AT&T and Verizon each entered the market with a zero market share relatively recently, it is to be expected that their market shares would be increasing. Second, reflecting the decline in the stand-alone long distance market legacy AT&T and legacy MCI (traditionally, the two largest stand-alone interexchange carriers) decided in 2004 to cease marketing such services; this led to a decrease in their market shares and a concomitant increase in the BOCs' respective market shares. A more important trend, however, has been the increasing number of consumers who now subscribe to multiple access services, including wireless services and broadband Internet access services (which permit customers then to subscribe to an over-the-top VoIP service with a long distance component).[128] This increase in access choices has allowed customers to engage in increasing usage substitution. This trend evidence provides further support for our

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[124] Our analysis here focuses on those customers that subscribe to local and long distance services from the same carrier as a bundle. Our analysis for wireless customers only considers customers who have "cut-the-cord." Consumers that subscribe to local service from one carrier and long distance service from another carrier are included in our analysis of the stand-alone long distance market. *See supra* part III.A.1.a(i)(a)(i).

[125] Appendix B, Table 1. Like our analysis of the stand-alone long distance market, *see supra* n.119, our analysis of this bundled market assumes that 10 percent of households have "cut-the-cord." We follow the procedure set forth in Appendix B, notes 3 and 6, to estimate AT&T's and Verizon's shares of the bundled market.

[126] Appendix B, Table 2.

[127] *See, e.g., AT&T Reclassification Order*, 11 FCC Rcd at 3346, para. 139.

[128] *See* AT&T Apr. 24, 2007 *Ex Parte* Letter at 2, Attach. at 4 (citing December 2005 Yankee Report that 70 percent of households have a mobile wireless phone); *High-Speed Services Jan. 2007 Report* at Table 3. We note that these market developments have occurred since the Commission adopted the *LEC Classification Order* in 1997. Specifically, at that time, personal communications service (PCS) carriers were only beginning to initiate services in a relatively small number of markets. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Second Report, 12 FCC Rcd 11266, 11290 (1997) (reporting that PCS licensees had initiated services in portions of 29 major trading areas). Mobile wireless carriers had not yet begun to offer regional or national calling plans that permit consumers to place what would have been toll calls without incurring additional per minute charges. *See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 16 FCC Rcd 13350, 13377 (2001) (reporting that, in 1998, AT&T became the first wireless carrier to offer a large bucket of minutes plan with a regional or national footprint, but that virtually all of the major operators offered similar plans by 2001). Further, few customers had access to, or subscribed to broadband Internet access services. *High-Speed Services Jan. 2007 Report* at Table 3 (showing less than 3.2 million subscribers nationwide in 2000).

finding that AT&T and Verizon lack market power in the provision of mass market interstate, long distance services within their franchise areas.

45. In addition, the Commission traditionally considers demand substitutability factors. The record in this proceeding does not include data sufficient for us to estimate precisely the own-price elasticity of demand for stand-alone, interstate, long distance or bundled local and long distance services.[129] Nor does the record permit us to determine the cross-elasticity of demand between interstate, long distance services provided by wireline carriers and similar services provided by wireless carriers and over-the-top VoIP providers. Nevertheless, the evidence in the record is consistent with the Commission's previous finding that customers are willing to shift usage to wireless and over-the-top VoIP providers in response to changes in relative prices.[130] More specifically, the increase in the number of customers subscribing to competitive wireline and cable services suggests an increase in the elasticity of demand for AT&T's and Verizon's interstate, long distance services.[131] In addition, the increase in subscriptions to broadband Internet access services,[132] the increase in subscriptions to mobile wireless services,[133] and the migration of wireline minutes to mobile wireless minutes indicate that consumers are increasingly finding that these alternatives serve as substitutes for traditional wireline long distance services offered by AT&T, Verizon and other carriers.[134]

46. Finally, with respect to supply substitutability, we note that the Commission, in the *LEC Classification Order,* found that there was significant excess capacity for the provision of interstate long distance services, which would permit competitors to expand their output should a BOC attempt to raise the price of these services.[135] Moreover, in the recent *BOC Merger Orders*, the Commission reaffirmed

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[129] The "own-price elasticity" of demand refers to the percentage change in the quantity demanded of a particular service that results from a change in the price of that service.

[130] *AT&T/BellSouth Order*, 22 FCC Rcd at 5716, paras. 98-99; *SBC/AT&T Order,* 20 FCC Rcd at 18342-43, paras. 93-94; *Verizon/MCI Order*, 20 FCC Rcd at 18484-86, paras. 93-94.

[131] *See* Appendix B, Tables 1 and 2. Facilities-based residential competitive local service lines have increased from **[REDACTED]** to **[REDACTED]** within AT&T's franchise areas and from **[REDACTED]** to **[REDACTED]** within Verizon's franchise areas. *See, e.g.*, AT&T April 23, 2007 *Ex Parte* Letter, Exh. 1.f; Verizon March 27, 2007 Ex Parte Letter, Exh. 1.f; Verizon April 13, 2007 *Ex Parte* Letter, Exh. 1.f.4, and notes accompanying Appendix B, Tables 1 and 2.

[132] *High-Speed Services Jan. 2007 Report* at Table 3. We base this conclusion on the Commission's findings in the *SBC/AT&T Order* and *Verizon/MCI Order. See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18369-72, paras. 147-52; *Verizon/MCI Order*, 20 FCC Rcd at 18337-40, paras. 86-88. There is no evidence in the record to suggest that consumers within the legacy BellSouth region would view VoIP services differently than would consumers in the legacy SBC region.

[133] *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 11009-11, paras. 157-61 (2006) (*Eleventh CMRS Competition Report*).

[134] *See, e.g., id.* at 11027, para. 206; *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*Universal Service Contribution Methodology Order*), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007). We find the studies of price elasticity for intraLATA services in Arizona and Oregon cited by legacy AT&T inapposite to our analysis of interLATA services, and find, moreover, that legacy AT&T's argument is inconsistent with the evidence of increasing access and usage substitution for traditional wireline long distance services.

[135] *LEC Classification Order,* 12 FCC Rcd at 15811, para. 97.

its finding that the wholesale long distance market is competitive due to substantial excess capacity.[136] There is no evidence in this record that would cause us to reconsider these findings.

47. Accordingly, based on the foregoing market analysis, we find that AT&T and Verizon lack individual, classical market power in the provision of interstate, long distance services for the mass market. Despite this general finding, the record does raise two areas of potential concern. The first concern relates to customers that make relatively few interstate long distance calls. In the *AT&T Reclassification Order,* the Commission expressed concern that, while AT&T lacked individual market power in the provision of mass market, interstate interLATA telecommunications services, customers that make few interstate long distance calls might nevertheless be harmed by the elimination of price cap regulation for AT&T's Basket One services.[137] In response, AT&T offered certain commitments to protect these consumers, which the Commission accepted and made conditions of its Order.[138] Here, we are concerned that consumers that make relatively few interstate long distance calls and that do not subscribe to wireless service or broadband Internet access service may have fewer competitive choices among interstate, interLATA long distance providers, and may not be able to avoid the impact of a price increase by engaging in usage substitution. We address this concern in part III.A.4.b(iii) below.

48. Our second concern relates to a potential information failure that may prevent consumers from selecting the most cost-effective long distance plan. Consumers today that subscribe to wireline unlimited long distance plans often are not informed of their monthly usage of wireline long distance minutes. Without such information on their toll usage, however, they may have insufficient information to determine whether it might be more cost-effective for them to select a long distance plan that offers a limited number of toll minutes or charges long distance calls on a per-minute basis. In this regard, we believe that a consumer needs transparency in pricing to ensure that he chooses the carrier that best suits his or her needs.[139] We address this concern in part III.A.4.b(iv) below.

(b) Retail Enterprise Services

49. We conclude that AT&T and Verizon separately lack classical market power with respect to interstate, long distance services for the enterprise market. In evaluating whether AT&T and Verizon separately possess market power, we consider AT&T's and Verizon's market share, their competitors' market shares, trends in their market shares, factors affecting demand substitutability, and supply substitutability. Although we find that AT&T's and Verizon's market shares within their respective franchise areas are relatively high for some relevant products,[140] we nonetheless conclude that they each separately lack market power with respect to in-region, interstate, enterprise, long distance services.

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[136] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18369-72, paras. 147-52; *Verizon/MCI Order*, 20 FCC Rcd at 18510-12, paras. 145-51.

[137] AT&T's Basket One services included residential and small business services. *See AT&T Reclassification Order*, 11 FCC Rcd at 3277, para. 8.

[138] *See AT&T Reclassification Order*, 11 FCC Rcd at 3315, para. 84; *see also Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, para. 71 (Qwest committed for two years to freeze the per-minute prices for two calling plans that it currently offers which are tailored to the needs of those customers who make few long distance calls and who do not subscriber to wireless or broadband Internet access service. Qwest also committed not to increase the monthly fee that applies to one of these plans by more than one dollar.).

[139] *See Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5244, para. 72.

[140] *See* Appendix C, Tables 1-8.